(22)

No. 06-593

FILED
FEB 2 0 2007
CLERK

IN THE

Supreme Court of the United States

LONG ISLAND CARE AT HOME, LTD. AND
MARYANN OSBORNE,
Petitioners,

v.

EVELYN COKE,
Respondent.

**On Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit**

JOINT APPENDIX

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**PETITION FOR CERTIORARI FILED OCTOBER 26, 2006
CERTIORARI GRANTED JANUARY 5, 2007**

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The following opinions have been omitted from the Joint Appendix because they appear at the indicated pages of the Appendix to the Petition for a Writ of Certiorari:

Opinion of the United States Court of Appeals for the Second Circuit on Remand ..... Pet. App. 1a

Opinion of the United States Court of Appeals for the Second Circuit ..... Pet. App. 7a

Opinion of the United States District Court for the Eastern District of New York ..... Pet App. 33a

The following document appears at the indicated page of the Appendix to the Petition for a Writ of Certiorari:

Wage and Hour Advisory Memorandum No. 2005-1 ..... Pet. App. 50a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
Brooklyn (Central Islip)

Case No. 2:02-cv-02010-TCP

EVELYN COKE, *individually and on behalf of others similarly situated,*
Plaintiff,

v.

LONG ISLAND CARE AT HOME, LTD., *et al.*,
Defendants.

DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
04/02/2002	1	Complaint filed and summons issued as to defendant(s) Long Island Care at Home, Ltd., Maryann Osborne. Filing fee $150.00. Receipt number: 259868. Jury trial demanded. Filed by Leon Greenberg on behalf of Evelyn Coke. (Attachments: # 1 Civil Cover Sheet) (Romano, Daniel) (Entered: 04/08/2002)
		* * * *
09/03/2002	6	Answer to complaint. filed by Arnold S. Klein on behalf of Long Island Care at Home, Ltd., Maryann Osborne. (Lopez, Adriana) (Entered: 09/05/2002)
		* * * *
03/19/2003	10	MOTION to Dismiss *Pltff's complaint* by Long Island Care at Home, Ltd., Maryann Osborne. (Lopez, Adriana) (Entered: 03/27/2003)

DATE	NO.	PROCEEDINGS
03/19/2003	11	DECLARATION of Arnold Klein in Support of Motion to dismiss the pltff's complaint. Filed by Long Island Care at Home, Ltd., Maryann Osborne. (Lopez, Adriana) (Entered: 03/27/2003)
03/19/2003	12	MEMORANDUM in Support of the [10] MOTION to Dismiss *Pltff's complaint* by Long Island Care at Home, Ltd., Maryann Osborne. (Lopez, Adriana) (Entered: 03/27/2003)
03/19/2003	13	MEMORANDUM in Opposition to the [10] MOTION to Dismiss *Pltff's complaint* by Evelyn Coke. (Lopez, Adriana) (Entered: 03/27/2003)
03/19/2003	14	REPLY Memorandum in further support of [10] MOTION to *Dismiss Pltff's* complaint filed by Long Island Care at Home, Ltd., Maryann Osborne. (Lopez, Adriana) (Entered: 03/27/2003)
03/19/2003	15	Cross MOTION to Compel *an Order directing the circulation of a Notice of pendency in this matter. Filed* by Evelyn Coke. (Lopez, Adriana) (Entered: 03/28/2003)
03/19/2003	16	MEMORANDUM in Support of Cross MOTION to Compel *an Order directing the circulation of a Notice of pendency in this matter. Filed* by Evelyn Coke. (Lopez, Adriana) (Entered: 03/28/2003)

DATE	NO.	PROCEEDINGS
03/19/2003	17	DFT's REPLY memorandum in Opposition to the [15] Cross MOTION to Compel an *Order directing the circulation of a Notice of pendency in this matter. Filed* by Long Island Care at Home, Ltd. (Lopez, Adriana) (Entered: 03/28/2003)
03/19/2003	18	REPLY memorandum of law in further Support of the [15] Cross MOTION to Compel *an Order directing the circulation of a Notice of pendency in this matter. Filed* by Long Island Care at Home, Ltd. (Lopez, Adriana) (Entered: 03/28/2003)
04/02/2003	19	Minute Entry for proceedings held before Judge Thomas C. Platt: Motion Hearing held on 4/2/2003 at 10:30 am re: Dft's motion to dismiss and pltffs Cross MOTION to Compel *an Order directing the circulation of a Notice of pendency. Counsel for all side present. Motions argued by all sides. Decision reserved. Pltff filed the case as a test case, the court will decide how it wishes to proceed. (Court Reporter H. Rapaport.) (Lopez, Adriana) (Entered: 04/09/2003)*
		* * * *
05/07/2003	24	PLTFF'S SUPPLEMENTAL MEMORANDUM of law with exhibits in Opposition to dfts' motion for judgment on the pleadings. (Lopez, Adriana) (Entered: 05/15/2003)

DATE	NO.	PROCEEDINGS
05/07/2003	27	Letter dated 5/6/03 from Leon Greenberg to USDJ Platt re: I would like to advise the Court that the memorandum raises the new issue of whether 29 C.F.R. 552.109 is procedurally invalid for failing to have been adopted. (Lopez, Adriana) (Entered: 05/27/2003)
05/09/2003	23	Letter dated 5/9/03 from Arnold Klein to USDJ Platt re: We are writing to object to the supplemental memorandum just submitted by plaintiff's counsel, and wish to know how the court wants us to proceed. (Lopez, Adriana) (Entered: 05/15/2003)
05/12/2003	25	Letter dated 5/9/03 from Arbold [sic] Klein to USMJ Lindsay re: Writing to provide your Hnor with a status report as to dfts' motion for judgment on the pleadings. We are submitting supplemental submissions (Lopez, Adriana) (Entered: 05/16/2003)
05/12/2003		ORDER: Parties to provide further status letter by 7/1/03. So Ordered. Signed by Judge Arlene R. Lindsay on 5/12/03. cf/eod 25 (Lopez, Adriana) (Entered: 05/16/2003)
05/16/2003	26	DFTS' SUPPLEMENTAL MEMORANDUM of law in further Support of [10] MOTION to Dismiss Pltff's complaint. Filed by by Long Island Care at Home, Ltd., Maryann Osborne. (Lopez, Adriana) (Entered: 05/27/2003)

DATE	NO.	PROCEEDINGS
05/20/2003	28	TRANSCRIPT of Proceedings held on 4/2/03 @ 10:30 am. before Judge USDJ Platt. Court Reporter: Harry Rapaport. (Lopez, Adriana) (Entered: 05/27/2003)
05/23/2003	29	ORDER: Dfts' motion for Judgment on the pleadings is GRANTED. Pltff's motion for circulation of a Notice of pendency and of a concent [sic] to Joinder to similarly situated persons pursuant to 29USC216(b) is DENIED. Signed by Judge Thomas C. Platt on 5/23/03. cm (Lopez, Adriana) (Entered: 05/30/2003)
05/30/2003	30	JUDGMENT: Pltff take nothing of dfts; Dfts' motion for judgment on the pleadings is granted; and pltff's motion for circulation of pendency is denied. Signed by Deputy Clerk Ralph Branciforte on 5/30/03. Copies Mailed. (Lopez, Adriana) (Entered: 05/30/2003)
06/24/2003	31	NOTICE OF APPEAL by Evelyn Coke, appellant, from judgment/order granting deft's motion for summary judgment. Aff. of service attached. Filing fee $105.00 paid, receipt number 279446. Judge notified. (Glenn, Marilyn).(Entered: 06/27/2003)
06/27/2003		Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re 31 Notice of Appeal. (Glenn, Marilyn) (Entered: 06/27/2003)

* * * *

DATE	NO.	PROCEEDINGS
07/28/2003	32	USCA Scheduling Order as to 31 Notice of Appeal filed by Evelyn Coke, Transmission of Notice of Appeal and Docket Sheet to USCA. Appeal Record due by 8/21/2003. Appellant's brief due 8/28/03; appellee's brief due 9/29/03; argument not earlier than 11/10/03. (Romano, Daniel) Modified on 10/3/2003 (Romano, Daniel). (Entered: 10/03/2003)
09/25/2003		DESIGNATION of Record on Appeal by Evelyn Coke re 31 Notice of Appeal, including original and three copies of the index, certified docket and clerk's certificate. Acknowledgment requested. (Romano, Daniel) (Entered: 10/03/2003)
10/17/2003	33	USCA Acknowledgment for 31 Notice of Appeal filed by Evelyn Coke. USCA no. 03-7666 (Romano, Daniel) (Entered: 10/21/2003)
02/02/2006	34	Copy of letter from U.S. Supreme Court to USCA, 2nd Circuit, re cert. granted. Copy sent to chambers. (Romano, Daniel) (Entered: 02/08/2006)
04/19/2006	35	ORDER of USCA(copy): The Court is asking the parties to submit supplemental briefs as to 31 Notice of Appeal filed by Evelyn Coke. Applellant's brief due 14 days from the date of this order. Appellee's response due 7 days after that date. USCA# 03-7666-cv. (Duong, Susan) (Entered: 04/20/2006)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Case No. 2:02-cv-02010-TCP

EVELYN COKE, *individually and on behalf of others similarly situated,*
Plaintiff,

v.

LONG ISLAND CARE AT HOME, LTD., *et al.*,
Defendants.

DOCKET ENTRIES

DATE	PROCEEDINGS
6/30/2003	Copy of district court judgment- RECEIVED. [03-7666] [Entry date Jul 8 2003] [DT]
6/30/2003	Copy of district court memorandum and order RECEIVED. [03-7666] [Entry date Jul 8 2003] [DT]
7/11/2003	Appellant Evelyn Coke Form C filed, with proof of service. [03-7666] Form C deadline satisfied. [Entry date Jul 17 2003] [DT]
7/11/2003	Appellant Evelyn Coke Form D filed, with proof of service. [03-7666] Form D deadline satisfied. [Entry date Jul 17 2003] [DT]
	* * * *
10/6/2003	Record on appeal index in lieu of record filed. [Entry date Oct 8 2003] [DT]
10/10/2003	Appellant Evelyn Coke brief FILED with proof of service. [Entry date Oct 14 2003] [DT]

DATE	PROCEEDINGS
10/10/2003	Appellant Evelyn Coke joint appendix filed w/pfs. Number of volumes: 1. [Entry date Oct 14 2003] [DT]
	* * * *
12/5/2003	Appellee Long Island Care at, Appellee Maryann Osborne motion to attach district court memorandum FILED (w/pfs). [2495395-1] [Entry date Dec 9 2003] [DT]
12/8/2003	New party added: U.S. Dept. of Labor. [Entry date Dec 10 2003] [DT]
12/8/2003	Amicus Curiae U.S. Dept. of Labor brief filed with proof of service. [Entry date Dec 10 2003] [DT]
12/9/2003	Letter dated 12/5/03 from Craig Becker, Esq., informing the Court that he is not opposed to appellees' motion to file letter brief with district court memorandum received [Entry date Dec 9 2003] [DT]
	* * * *
12/12/2003	Appellee Long Island Care at, Appellee Maryann Osborne LETTER BRIEF filed with proof of service. Satisfy appellee's brief due. [Entry date Dec 12 2003] [DT]
12/12/2003	Order (endorsed on appellant's letter submitted by Craig Becker, Esq. filed stating re: The above request is hereby granted. (SB) Note: Appellant requests to file a 10 page reply brief. [Entry date Dec 12 2003] [DT]
	* * * *

DATE	PROCEEDINGS
12/12/2003	Order FILED GRANTING motion to attach district court memorandum [2495395-1] by Appellee Long Island Care at, Maryann Osborne, endorsed on motion form dated 12/5/03. (SB) [Entry date Dec 12 2003] [DT]
	* * * *
12/29/2003	Appellant Evelyn Coke reply brief filed with proof of service. Satisfy appellant's reply brief due, [Entry date Dec 31 2003] [DT]
1/21/2004	Letter dated 1/13/04 from Craig Becker, Esq., suggesting that the U.S. Dept. of Labor be invited to argue on behalf of the appellee received [Entry date Jan 26 2004] [EA]
	* * * *
2/6/2004	Amicus Curiae U.S. Dept. of Labor motion to allow oral argument filed with proof of service. [Entry date Feb 13 2004] [EA]
	* * * *
2/20/2004	Order FILED GRANTING motion to allow oral argument by Amicus Curiae U.S. Dept. of Labor, endorsed on motion dated 2/6/2004 [Entry date Feb 20 2004] [JC]
3/4/2004	Case heard before WALKER, CH.J; KATZMANN, C.JJ; GLEESON, D.J CD DATE: 3/4/04 [Entry date Mar 4 2004] [RD]
7/22/2004	Judgment of the district court is Affirmed in part; Vacated in part; and Remanded by published signed opinion filed. (JMW) [Entry date Jul 22 2004] [EA]
7/22/2004	Judgment filed. [Entry date Jul 22 2004] [EA]

DATE	PROCEEDINGS
	* * * *
9/7/2004	MOVANT Home Care Council of New York City, Inc., brief received. (Problem: Pending motion for leave to file) [Entry date Sep 10 2004] [EA]
9/7/2004	MOVANT Home Care Association of New York State, Inc., brief received. (Problem: Pending motion for leave to file) [Entry date Sep 10 2004] [EA]
9/7/2004	MOVANT New York State Association of Health Care Providers, Inc., brief received. (Problem: Pending motion for leave to file) [Entry date Sep 10 2004] [EA]
9/7/2004	Appellee Long Island Care at, Appellee Maryann Osborne Petition for rehearing and petition for rehearing en banc filed with proof of service. [Entry date Sep 10 2004] [EA]
9/7/2004	Movant Home Care Council of New York City, Inc. motion file brief as amicus curiae filed with proof of service. [Entry date Sep 10 2004 [EA]
9/7/2004	Movant Home Care Association of New York State, Inc. motion file brief as amicus curiae filed with proof of service. [Entry date Sep 10 2004] [EA]
9/7/2004	Movant New York State Association of Health Care Providers, Inc. motion file brief as amicus curiae filed with proof of service. [Entry date Sep 10 2004] [EA]
	* * * *

DATE	PROCEEDINGS
9/10/2004	Movant National Association for Home Care & Hospice motion file brief as amicus curiae filed with proof of service. [Entry date Sep 13 2004] [EA]
	* * * *
9/13/2004	Movant New York City motion file brief as amicus curiae filed with proof of service. [Entry date Sep 13 2004] [EA]
	* * * *
9/14/2004	Movant Continuing Care Leadership Coalition, Inc. motion file brief as amicus curiae filed with proof of service. [Entry date Sep 15 2004] [EA]
	* * * *
1/10/2005	Order FILED DENYING motion Petition for rehearing by Appellee Long Island Care at, Appellee Maryann Osborne, endorsed on motion dated 9/14/2004, Order FILED DENYING motion petition for rehearing en banc by Appellee Long Island Care at, Appellee Maryann Osborne, endorsed on motion dated 9/14/2004. (AH) [Entry date Jan 11 2005] [EA]
1/10/2005	Order FILED DENYING motion file brief as amicus curiae by Movant Home Care Council of New York City, Inc., endorsed on motion dated 9/14/2004. (AH) [Entry date Jan 11 2005] [EA]
1/10/2005	Order FILED DENYING motion file brief as amicus curiae by Movant New York City, endorsed on motion dated 9/14/2004. (AH) [Entry date Jan 11 2005] [EA]

DATE	PROCEEDINGS
1/10/2005	Order FILED DENYING motion file brief as amicus curiae by Movant National Association for Home Care & Hospice, endorsed on motion dated 9/14/2004. (AH) [Entry date Jan 11 2005] [EA]
1/10/2005	Order FILED DENYING motion file brief as amicus curiae by Movant New York State Association of Health Care Providers, Inc., endorsed on motion dated 9/14/2004. (AH) [Entry date Jan 11 2005] [EA]
1/10/2005	Order FILED DENYING motion file brief as amicus curiae by Movant Home Care Association of New York State, Inc., endorsed on motion dated 9/14/2004. (AH) [Entry date Jan 11 2005] [EA]
1/10/2005	Order FILED DENYING motion file brief as amicus curiae by Movant Home Care Association of New York State, Inc., Movant Continuing Care Leadership Coalition, Inc., endorsed on motion dated 9/14/2004. (AH) [Entry date Jan 11 2005] [EA]
	* * * *
1/17/2005	Appellee Long Island Care at, Appellee Maryann Osborne motion to stay the mandate filed with proof of service. [Entry date Jan 18 2005] [AM]
1/21/2005	Appellant Evelyn Coke, memorandum in opposition to motion stay the mandate filed with proof of service. [Entry date Jan 25 2005] [EA]

DATE	PROCEEDINGS
1/25/2005	Letter dated 1/25/05 from Daniel Alter, Esq., in response to memorandum in opposition to motion to stay mandate, received [Entry date Jan 26 2005] [EA]
	* * * *
3/22/2005	Order FILED GRANTING motion stay the mandate by Appellee Long Island Care at, Appellee Maryann Osborne, endorsed on motion dated 1/17/2005. IT IS HEREBY ORDERED that the motion by appellee to stay mandate pending application to the Supreme Court for certiorari review is GRANTED. Before: Hon. John M. Walker, Jr., Chief Judge, Hon. Robert A. Katzmann, Circuit Judge, Hon. John Gleeson, District Judge.(TWY) [Entry date Mar 22 2005] [EA]
4/5/2005	Letter dated 3/30/05 from Daniel Alter, Esq., regarding FRAP 41(d)(2)(B) automatic stay received [Entry date Apr 6 2005] [EA]
	* * * *
1/26/2006	Writ of Certiorari GRANTED. The petition for a writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Second Circuit, for further consideration in light of the Department of Labor's Wage and Hour Advisory Memorandum No. 2005-1 (December 1, 2005). [Entry date Jan 30 2006] [EA]
2/16/2006	Faxed Letter dated 2/7/06 from Daniel Alter, Esq., regarding the granted writ of certiorari, received [Entry date Feb 21 2006] [EA]

DATE	PROCEEDINGS
3/2/2006	Copy of noticed [sic] by Supreme Court RECEIVED: Clerk's Costs: $300.00. [Entry date Mar 9 2006] [EA]
3/13/2006	Letter received from Craig Becker, Esq. requesting a new briefing schedule and reargument. [Entry date Mar 15 2006] [AM]
3/17/2006	AMICUS CURIAE U.S. Dept. of Labor, 28(J) letter received. [Entry date Mar 17 2006] [AM]
3/20/2006	AMICUS CURIAE U.S. Dept. of Labor, 28(J) letter received. [Entry date Mar 21 2006] [AM]
4/7/2006	Order filed stating: The Court is asking the parties in the above-captioned case to submit supplemental briefs, not to exceed ten (1) [sic] single-spaced pages, addressing the following issues: 1) What arguments or issues does the Department of Labor's ("DOL") December 1, 2005, Wage and Hour Advisory Memorandum raise that differ from the arguments presented to this court by Long Island Care at Home in the 2004 litigation. 2) If there are, in fact, no new arguments or issues presented in the DOL memorandum, how does that memorandum affect this court's analysis of the case. The parties need not restate arguments already presented to this court except to the extant [sic] that the DOL's 2005 memorandum affects either the arguments themselves or the legal analysis of the arguments on which this court rested its conclusions. The court does not intend to schedule supplemental oral argument in this case. Appellant's brief is due fourteen (14) days from the date of this order. Appellee's response is due seven (7) days

DATE	PROCEEDINGS
	after that date. FOR THE COURT: Thomas W. Asreen, Acting Clerk of Court. ([JMW, Ch.J.] RAK, CJ, JGleeson, DJ, EDNY). [Entry date Apr 7 2006] [PC]
	* * * *
6/2/2006	APPELLANT Evelyn Coke, supplemental brief filed with proof of service. [Entry date Jun 15 2006] [EA]
	* * * *
6/7/2006	AMICUS CURIAE AARP Foundation Litigation, brief filed with proof of service. [Entry date Jun 15 2006] [EA]
	* * * *
6/12/2006	APPELLEE Long Island Care at, Maryann Osborne, supplemental brief filed with proof of service. [Entry date Jun 15 2006] [EA]
	* * * *
6/20/2006	AMICUS CURIAE U.S. Dept. of Labor, brief filed with proof of service. [Entry date Jun 22 2006] [EA]
6/21/2006	AMICUS CURIAE New York City, New York State Association of Counties, brief filed with proof of service. [Entry date Jun 22 2006] [EA]
6/21/2006	AMICUS CURIAE New York State Association of Health Care Providers, Inc., brief filed with proof of service. [Entry date Jun 22 2006] [EA]
	* * * *

DATE	PROCEEDINGS
6/21/2006	Movant Continuing Care Leadership Coalition, Inc. motion file brief as amicus curiae filed with proof of service. [Entry date Jun 22 2006 [EA]
6/22/2006	AMICUS CURIAE Home Care Association of New York, Inc., brief filed with proof of service. [Entry date Jul 5 2006 [NG]
7/5/2006	AMICUS CURIAE Continuing Care Leadership Coalition, Inc., brief filed with proof of service. [Entry date Jul 12 2006 [EA]
7/5/2006	Order FILED GRANTING motion file brief as amicus curiae by Movant Continuing Care Leadership Coalition, Inc., endorsed on motion dated 6/21/2006. Before: Hon. John M. Walker, Jr., Chief Judge, Hon. Robert A. Katzmann, Circuit Judge, Hon. John Gleeson, District Judge/EDNY. IT IS HEREBY ORDERED that the motion for leave to file an amicus curiae brief is GRANTED. (TWY) [Entry date Jul 12 2006 [EA]
	* * * *
8/31/2006	Judgment of the district court is Affirmed in part, Vacated in part, and Remanded by published unsigned PER CURIAM opinion filed. [Entry date Aug 31 2006] [EA]
8/31/2006	Judgment filed. [Entry date Aug 31 2006] [EA]
	* * * *
9/20/2006	Appellee Maryann Osborne, Appellee Long Island Care at motion to stay the mandate filed with proof of service. [Entry date Sep 20 2006] [AM]

DATE	PROCEEDINGS
9/28/2006	Appellant Evelyn Coke, memorandum in opposition to motion stay the mandate filed with proof of service. [Entry date Oct 4 2006] [EA]
10/4/2006	Letter dated 10/4/06 from Daniel S. Alter, Esq., in further support of motion to stay mandate, and in response to opposition to stay mandate, received [Entry date Oct 4 2006] [EA]
10/10/2006	Order FILED GRANTING motion stay the mandate by Appellee Long Island Care at, Appellee Maryann Osborne, endorsed on motion dated 9/20/2006. Before: John M. Walker, Jr., Hon. Robert A. Katzmann, Circuit Judges, Hon. John Gleeson, District Judge/EDNY IT IS HEREBY ORDERED that Appellee's motion to stay the mandate for ninety (90) days pending submission of a petition for writ of certiorari to the United States Supreme Court is GRANTED.(TWY) [Entry date Oct 13 2006] [EA]
	* * * *
11/2/2006	Letter dated 10/31/06 from Daniel S. Alter, Esq., informing the Court that a Writ of Certiorari was filed with the United States Supreme Court, received [Entry date Nov 13 2006] [EA]
11/6/2006	Notice of filing petition for APPELLEE Long Island Care at, Maryann Osborne, dated 10/30/06 filed. Supreme Court #: 06-593. [Entry date Nov 9 2006] [EA]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CV 02 2010

EVELYN COKE, individually and on behalf of others similarly situated,

Plaintiff,

-against-

LONG ISLAND CARE AT HOME, Ltd. and MARYANN OSBORNE,

Defendants.

COMPLAINT

The Plaintiff, by her attorney Leon Greenberg P.C., as and for a Complaint against the defendants, states and alleges, as follows:

JURISDICTION, PARTIES AND PRELIMINARY STATEMENT

1. This Court has jurisdiction over the claims presented on the First Cause Of Action herein pursuant to the Act of June 25, 1938, ch 676, 52 Stat 1069, 29 USC Sections 201-219, known as the Fair Labor Standards Act ("the FLSA" or "the Act"), a law of the United States regulating interstate commerce, and specifically under the provisions of Section 16 of said act, as amended (29 U.S.C. § 216(b)).

2. This Court has jurisdiction over the New York State Law claims that are made under the Labor Law of the State of New York, and the New York Minimum Wage Act (the "NYMWA") in the Second Cause of Action pursuant to 28 U.S.C. § 1367(a).

3. The plaintiff EVELYN COKE (the "named plaintiff") is a resident of the State of New York and the County of Queens and is a former employee of one or more of the defendants.

4. The defendant LONG ISLAND CARE AT HOME, LTD. (the "corporate defendant") is a corporation formed pursuant to the Laws of the State of New York.

5. The defendant MARYANN OSBORNE is the owner or sole shareholder of the corporate defendant.

6. The defendant MARYANN OSBORNE is a partial shareholder of the corporate defendant.

7. The defendant MARYANN OSBORNE is a director of the corporate defendant.

8. The defendant MARYANN OSBORNE is an officer of the corporate defendant.

9. The defendant MARYANN OSBORNE by virtue of her status as an owner, shareholder, director, and officer of the corporate defendant exercises complete control over the corporate defendant.

10. The plaintiff has been an employee of one or more of the defendants during the time period pertinent to this complaint, to wit, the three years and six years immediately preceding the initiation of this action. The plaintiff has performed labor and services in various occupations that are subject to the provisions of the FLSA and New York State Labor Law that are mentioned herein. These occupations include, but are not limited to, work as a home healthcare attendant.

11. The defendants engage in a for-profit business which has gross revenue in excess of $500,000 per annum and is engaged in the production of goods for interstate commerce and/or the use and/or handling of goods which have moved in

interstate commerce as such terms are defined in the FLSA and are employers subject to the jurisdiction of the FLSA.

12. The individual defendant, by intentionally acting to violate the laws, rules, regulations, statutes and wage orders alleged herein, and by virtue of her position as controlling owner and/or manager of the corporate defendant, has acted as plaintiff's employers and have assumed personal liability for the claims of the plaintiff herein.

13. That the various violations of law which are alleged herein were committed intentionally and/or willfully by the defendants.

14. That there are numerous persons who are similarly situated to the named plaintiff in respect to the named plaintiff's claims under the FLSA and the NYMWA and the other provisions of the Labor Law of the State of New York in that such similarly situated persons, like the named plaintiff, performed substantial work, labor and services for the defendants for which such persons did not receive the compensation required by the FLSA and the NYMWA and the other provisions of the Federal Labor Law and the Labor Law of the State of New York.

15. That the persons similarly situated to the named plaintiff and described in paragraph 14 constitute, for the purposes of the NYMWA, a class of persons that is so numerous that joinder of all such persons individually is impractical.

16. There are questions of law and fact common to the class which predominate over any questions affecting only individual members, specifically whether the defendants have any legal obligation to the class members under the NYMWA and the other provisions of Labor Law of the State of New York and if so what is the extent of such obligation.

17. The claims of the named plaintiff are typical of the claims of the above described class, in that the interests of the

named plaintiff are co-extensive with the interests of the other members of the class, there is a lack of adverse interests between the named plaintiff and the other members of the class, and common questions exist.

18. The named plaintiff will fairly and adequately protect the interests of said class.

19. A class action is superior to other available methods for the fair and efficient adjudication of the class claims under the NYMWA and the other provisions of the Labor Law of the State of New York.

20. The named plaintiff brings the Second Cause of Action herein on behalf of herself individually and all persons similarly situated as a class action pursuant to Federal Rules of Civil Procedure Rule 23, in respect to all claims that the named plaintiff and all persons similarly situated have against defendants as a result of the defendants' violations of the NYMWA and the Wage Orders issued thereunder and the other provisions of the Labor Law of the State of New York.

AS AND FOR A FIRST CAUSE OF ACTION PURSUANT TO THE FEDERAL FAIR LABOR STANDARDS ACT ON BEHALF OF THE NAMED PLAINTIFF AND SUCH OTHER PERSONS WHO CONSENT IN WRITING TO JOIN THIS ACTION PURSUANT TO 29 U.S.C. § 216(B)

21. The named plaintiff brings this First Cause of Action pursuant to 29 U.S.C. § 216(b) on behalf of herself and all other similarly situated persons who consent in writing to join this action pursuant to 29 U.S.C. § 216(b), and upon information and belief there are numerous such similarly situated persons.

22. Pursuant to the applicable provisions of the FLSA, 29 U.S.C. § 206 and § 207, plaintiff was entitled to minimum wages and an overtime hourly wage of time and one-half her regular hourly wage for all hours worked in excess of forty

hours per week, plaintiff worked more than 40 hours per week for the defendants, and defendants willfully failed to make said overtime and/or minimum wage payments.

23. The named plaintiff on behalf of herself and all other similarly situated persons who consent in writing to join this action, seeks, on this First Cause of Action, a judgment for unpaid overtime wages and minimum wages, such sums to be determined based upon an accounting of the hours worked by, and wages actually paid to, the named plaintiff and such other similarly situated persons who consent in writing to join this action, and plaintiff also seeks an award of liquidated damages, attorney's fees, interest and costs as provided for by the FLSA.

AS AND FOR A SECOND CAUSE OF ACTION ON BEHALF OF THE NAMED PLAINTIFF AND ALL PERSONS SIMILARLY SITUATED PURSUANT TO THE NEW YORK STATE LABOR LAW

24. Plaintiff repeats and realleges each and every allegation previously made herein.

25. Pursuant to the New York Minimum Wage Act (the "NYMWA"), New York Labor Law Articles 6 and 19, New York Labor Law § 191, and the Wage Orders issued under the NYMWA at 12 N.Y.C.R.R. §§ 137-142, plaintiff was entitled to certain overtime wages, minimum wages and other wages, all of which the defendants failed to pay in violation of such laws.

26. Wherefore, the named plaintiff, on behalf of herself and the within described class of other persons similarly situated on this Second Cause of Action, seeks a judgment against the defendants for all wages which should have been paid, but were not paid, to the named plaintiff and such class members pursuant to the NYMWA and the Wage Orders issued thereunder and the other provisions of the Labor Law of the State of New York the total amount of such unpaid

wages to be determined at trial upon an accounting of the hours worked by, and wages paid to, the named plaintiff and the other class members, along with an award of attorney's fees, interest and costs as provided under the NYMWA and New York State Labor Law § 198 and § 663.

WHEREFORE, plaintiff demands judgment and a trial by jury against the defendants on each cause of action as specified aforesaid, together with such other further and different relief that the Court deems just.

Dated: New York, New York
March 29, 2002

Yours, Etc.,

LEON GREENBERG, P.C.
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By Leon Greenberg
Leon Greenberg (LG3280)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

[Filed SEP 3, 2002]

CV-02-2010

EVELYN COKE, individually and on behalf of others similarly situated

Plaintiff,

-against-

LONG ISLAND CARE AT HOME, LTD. and MARYANN OSBORNE,

Defendants.

ANSWER

Defendants Long Island Care at Home, Ltd. ("LI Care") and Maryann Osborne ("Osborne") (collectively, "Defendants"), by and through their attorneys Meltzer, Lippe & Goldstein, LLP, as and for their answer to plaintiff's complaint (the "Complaint"), aver as follows:

1. Deny the allegations contained in paragraph "1" of the Complaint.

2. Deny the allegations contained in paragraph "2" of the Complaint.

3. With respect to the allegations contained in paragraph "3" of the Complaint, admit that plaintiff is a former employee of LI Care, deny that plaintiff is a former employee of Osborne, and otherwise aver that they are without knowledge or information sufficient to form a belief as to the truth of said allegations.

4. Admit the allegations contained in paragraph "4" of the Complaint.

5. Deny the allegations contained in paragraph "5" of the Complaint.

6. Admit the allegations contained in paragraph "6" of the Complaint.

7. Admit the allegations contained in paragraph "7" of the Complaint.

8. Admit the allegations contained in paragraph "8" of the Complaint.

9. Deny the allegations contained in paragraph "9" of the Complaint.

10. With respect to the allegations contained in paragraph "10" of the Complaint, admit that plaintiff has been employed by LI Care as a home healthcare attendant and that while so employed was subject to the provisions of the New York State Labor Law, but otherwise deny the allegations.

11. With respect to the allegations contained in paragraph "11" of the Complaint, admit that LI Care engages in a for-profit business which has generated gross revenues in excess of $500,000 per annum, but otherwise deny the allegations.

12. Deny the allegations contained in paragraph "12" of the Complaint.

13. Deny the allegations contained in paragraph "13" of the Complaint.

14. Deny the allegations contained in paragraph "14" of the Complaint.

15. Deny the allegations contained in paragraph "15" of the Complaint.

16. Deny the allegations contained in paragraph "16" of the Complaint.

17. Deny the allegations contained in paragraph "17" of the Complaint.

18. Deny the allegations contained in paragraph "18" of the Complaint.

19. Deny the allegations contained in paragraph "19" of the Complaint.

20. With respect to the allegations contained in paragraph "20" of the Complaint, admit that plaintiff purports to bring the Second Cause of Action as a class action, but otherwise deny the allegations.

AS TO THE FIRST CAUSE OF ACTION

21. With respect to the allegations contained in paragraph "20" of the Complaint, admit that plaintiff purports to bring the First Cause of Action pursuant to 29 U.S.C. § 216(b), but otherwise deny the allegations.

22. Deny the allegations contained in paragraph "22" of the Complaint.

23. With respect to the allegations contained in paragraph "23" of the Complaint, admit that plaintiff seeks the relief described therein, but otherwise deny the allegations.

AS TO THE SECOND CAUSE OF ACTION

24. With respect to paragraph "24" of the Complaint, repeat and reallege their responses to paragraphs "1" through "23" of the Complaint as if fully set forth herein.

25. Deny the allegations contained in paragraph "25" of the Complaint.

26. Deny the allegations contained in paragraph "26" of the Complaint.

FIRST AFFIRMATIVE DEFENSE

27. The Complaint should be dismissed for failure to state a cause of action.

SECOND AFFIRMATIVE DEFENSE

28. The Complaint should be dismissed as against defendant Osborne for failure to state any grounds upon which she could be individually liable for the conduct alleged and/or purported damages or relief sought therein.

THIRD AFFIRMATIVE DEFENSE

29. "Companion" and/or "live-in" workers such as plaintiff are exempt from eligibility for minimum wage and overtime compensation under the Fair Labor Standards Act ("FLSA") and the implementing regulations, which have been adopted by the New York State Department of Labor and, as such, all claims for such relief under the FLSA must be discussed.

FOURTH AFFIRMATIVE DEFENSE

30. Since Plaintiff was exempt from eligibility for overtime compensation pursuant to the FLSA, she is not entitled to overtime compensation under New York law pursuant to the New York Miscellaneous Wage Order.

FIFTH AFFIRMATION [SIC] DEFENSE

31. This Court lacks subject matter jurisdiction over the claims asserted in the Complaint.

SIXTH AFFIRMATIVE DEFENSE

32. Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitation.

SEVENTH AFFIRMATIVE DEFENSE

33. This action cannot be certified as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

EIGHTH AFFIRMATIVE DEFENSE

34. Plaintiff has been paid all compensation due her and, as such, cannot state a cause of action.

NINTH AFFIRMATIVE DEFENSE

35. Since Defendants relied in good faith upon the companionship exemption set forth in the FLSA, Defendants cannot be liable for back pay, unpaid overtime wages or other relief under the FLSA in accordance with the Portal-To-Portal Act and, therefore, cannot be liable under New York law for unpaid overtime compensation pursuant to the New York Miscellaneous Wage Order.

WHEREFORE, Defendants demand judgment against plaintiff dismissing the Complaint in its entirety, and for such other and further relief as the Court deems just under the circumstances.

Dated: Mineola, New York
August 23, 2002

Respectfully submitted,

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